

## REMARKS

### *The Specification*

The continuing data in the first paragraph of page 1 has been updated to provide the provisional application number (60/266,318) that was assigned to priority Application No. 09/464,460 following conversion of Application No. 09/464,460 to a provisional application. Included herewith are the following as Exhibits A-D:

Exhibit A - copy of the Filing Receipt for Application No. 09/464,460, filed 12/14/1999;

Exhibit B - copy of the Petition to convert Application No. 09/464,460 to a provisional application;

Exhibit C - copy of the Decision on Petition, granting the petition to convert Application No. 09/464,460 to a provisional application; and

Exhibit D - copy of the Filing Receipt for converted Provisional App. No. 60/266,318.

Applicant respectfully submits that 37 CFR 1.78(a)(5) was satisfied at the time the instant application was filed, because the continuing data in the specification included a reference to the prior-filed provisional application by its original non-provisional application number, which was the only number available to Applicant at the time. The continuing data also indicated that a Petition to convert the prior-filed application to a provisional application had been filed.

Applicant's understanding that 37 CFR 1.78(a)(5) was satisfied upon filing of the instant application, as explained above, was confirmed in a telephone conversation on February 21, 2003, with Robert Clarke and Fred Silverberg, Senior Legal Advisors at the PTO's Office of Patent Legal Administration (OPLA).

Separately included herewith is a request to correct the filing receipt in the instant application so that it also includes the priority claim to Provisional App. No. 60/266,318, filed Dec. 14, 1999.

***Restriction/Election***

As set forth above, Applicant has elected the invention set forth in Group XIV (claims 73 and 80) with traverse. Applicant respectfully traverses two aspects of the restriction/election requirement:

*1. The Claims in Groups II and III Should All Be In One Group*

The Examiner has placed claims 23-26 into Group II, and claims 55-62 into Group III. However, both groups include claims drawn to a BIV packaging construct and both groups are classified in the same class (424) and subclass (187.1). In addition, although the Examiner states that the invention of group II “contains no transgene,” the claims of group III do not recite a transgene either. Furthermore, in the earlier restriction/election requirement dated Sept. 6, 2002, these claims were all grouped together (except for claim 26, which Applicant addressed in its response dated Nov. 4, 2002). Accordingly, Applicant respectfully submits that the claims in Groups II and III should all be in one group.

*2. Claims 71 and 72 Should Be In Group VI Instead of Group XII*

Applicant respectfully submits that claims 71 and 72 should be in Group VI instead of Group XII. Claims 71 and 72 are both drawn to a producer cell comprising (in varying scope) a packaging construct, a viral surface protein expression construct, and a vector construct. Claim 71 recites the packaging cell of claim 66 (which in turn recites the packaging construct of claim 55 and the viral surface protein expression construct of claim 63) in combination with the vector construct of claim 40. Claim 72 recites the three components outright, in independent form without reference to earlier claims. Claim 30 (presently in Group VI) is also drawn to a producer cell comprising a packaging construct, a viral surface protein expression construct, and a vector construct. In particular, claim 30 recites the three-vector system of claim 27. Thus, each of claims 30, 71, and 72 recite in varying scope a producer cell containing three constructs, *e.g.*, a three vector system as set forth in claim 27.

On the other hand, Group XII includes claims 66-70 drawn to a packaging cell that only recites two constructs, a packaging construct and a viral surface protein expression construct. Applicant therefore respectfully suggests that the producer cell claimed in claims 71-72 fits better with the invention of Group VI than with the packaging cell claimed in claims 66-70 of Group XII.

No new matter has been added. If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

  
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